

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 268 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX

Versus

POWER BUILD LTD

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Appearance:

MR MANISH R BHATT for Petitioner  
NOTICE NOT RECD BACK for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

Date of decision: 15/04/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal,  
Ahmedabad has referred the following questions for the  
opinion of this Court under section 256(1) of the  
Income-tax Act,1961.

"1. Whether, the Appellate Tribunal is right in law and on facts in directing the ITO investment allowance on cost of plant and machinery without deducting therefrom the amount of cash subsidy received by the assessee ?"

2. Whether the Appellate Tribunal is right in law and on facts in directing the Income-tax officer to allow depreciation on cost of building without deducting therefrom the amount of cash subsidy received by the assessee ?"

2. In the relevant assessment year, the assessee claimed relief under section 80J of the Act. During the relevant previous year, the assessee had received subsidy as against plant and machinery from the State Government. The I.T.O. held that since the subsidy was received against the cost of machinery, such cost was reduced to that extent for the purpose of grant of investment allowance and depreciation. The C.I.T (Appeals) held that the I.T.O. was not justified in deducting subsidy from the cost of the assets and thereby reducing allowance of depreciation investment allowance relief under section 80J of the Act and directed the I.T.O. to work out the reliefs without deducting the amount of subsidy received by the assessee. In an appeal before the Tribunal filed by the Revenue, the Tribunal found that the point in controversy was covered in favour of the assessee by the decision of the Gujarat High Court in CIT vs. Grace Papers Industries Pvt.Ltd. reported in 183 ITR, 591 and rejected the appeal of the Revenue.

3. In C.I.T. vs. Grace Papers Industries Pvt.Ltd., this Court in a similar context took a view that the Government subsidy amount cannot be deducted from the cost of assets in computing depreciation, development rebate and investment allowance. It was held that since the subsidy granted was not to meet the cost of the assets, the question of reducing the actual cost of the assets to the assessee to the expenditure of subsidy received by them, for the purpose of working out capital employed does not arise. It was held that the assessee is entitled to relief under section 80J without deduction of the cost to the extent of the subsidy. This view came to be approved by the Supreme Court in C.I.T. vs. P.J. Chemicals Ltd. reported in 210 ITR, 830 in which it was held that where Government subsidy is intended for an incentive to encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of fixed capital cost which is the basis of determining the subsidy being

only a measure adopted under the scheme to quantify the financial aid, is not a payment directly or indirectly to meet any portion of the actual cost. It was held that the amount of subsidy is not to be deducted from the actual cost under section 43(1) for the purpose of calculation of depreciation etc. In view of this settled legal position, we hold that the Tribunal was right in holding that the assessee was entitled to the relief without deducting therefrom the amount of subsidy received from the State Government from the actual cost of the plant and machinery. The questions referred are therefore, answered in the affirmative against the Revenue. The Reference stands disposed of accordingly with no order as to costs.

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